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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/995,358	11/26/2001	Jules Zecchino	2870/566	2755

7590

09/08/2006

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EXAMINER

FUBARA, BLESSING M

ART UNIT	PAPER NUMBER
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1618

DATE MAILED: 09/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Notification of Non-Compliant Appeal Brief (37 CFR 41.37)</b>	<b>Application No.</b> 09/995,358	<b>Applicant(s)</b> ZECCHINO ET AL.	
	<b>Examiner</b> Blessing M. Fubara	<b>Art Unit</b> 1618	

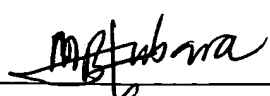
**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

The Appeal Brief filed on 15 May 2006 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.  
**EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☒ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☐ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☒ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

See attached. See also attached interview summary.





Art Unit: 1618

NOTIFICATION OF NON-COMPLIANCE WITH THE REQUIREMENTS OF 37 CFR 41.37(c)

The brief does not contain the items of the brief required by 37 CFR 41.37(c)(1) under the appropriate headings and/or in the order indicated.

A review of the application reveals that the brief does not comply with the following sections of 37 CFR § 41.37(c) as stated below:

(1) "Evidence appendix", as set forth in 37 CFR § 41.37(c)(1)(ix); which states "[a]n appendix containing copies of any evidence submitted pursuant to 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered in the record by the examiner. Reference to un-entered evidence is not permitted in the brief. See 37 CFR 41.33 for treatment of evidence submitted after appeal. This appendix may also include copies of the evidence relied upon by the examiner as to grounds of rejection to be reviewed on appeal. **The appendix should start on a new page.** If there is no evidence being relied upon by Appellant in the appeal, then an evidence appendix should be included with the indication "None.""

(2) "Related proceedings appendix" as set forth in 37 CFR § 41.37 (c)(1)(x), which states "[a]n appendix containing copies of decisions rendered by a court or the Board in any proceeding identified pursuant to 37 CFR 41.37(c)(1)(ii). **The appendix should start on a new page.** If there are no such copies of decisions being submitted in the appeal, then a related proceedings appendix should be included with the indication "none."

(3) "Claims appendix" as set forth in 37 CFR § 41.37 (c)(1)(viii), which requires that

Art Unit: 1618

“an appendix containing a copy of the claims involved in the appeal. The copy of the claims \*\* should be a clean copy and should not include any markings such as brackets or underlining except for claims in a reissue application.” The copy of the claims should be double-spaced and the appendix should start on a new page. Furthermore, 37 CFR 41.37(c)(2) prohibits the inclusion in a brief of any new or non-admitted amendment, affidavit or other evidence.

37 CFR § 41.37 (c)(2) states “A brief shall not include any new or non-admitted amendment, or any new or non-admitted affidavit or other evidence. See § 1.116 of this title for amendments, affidavits or other evidence filed after final action but before or on the same date of filing an appeal and § 41.33 for amendments, affidavits or other evidence filed after the date of filing the appeal.”

Accordingly, the supplemental brief filed 5/15/2006 does not comply with the new rules under 37 CFR § 41.37 (c). A substitute brief that is in compliance with 37 CFR § 41.37(c) is required. For more information on the Board's new rules, please see the web page entitled "More Information on the Rules of Practice Before the BPAI," Final Rule at:


<http://www.uspto.gov/web/offices/dcomp/bpai/fr2004/moreinfo.html>

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Blessing M. Fubara whose telephone number is (571) 272-0594. The examiner can normally be reached on 7 a.m. to 5:30 p.m. (Monday to Thursday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Hartley can be reached on (571) 272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1618

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Blessing Fubara  
Patent Examiner  
Tech. Center 1600